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In The

Supreme Court of the United States

TIM RIDLEY,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Georgia

PETITION FOR A WRIT OF CERTIORARI

JOHNSON LAW, P.C.
TODD M. JOHNSON
Counsel of Record
P.O. Box 48
Cohutta, GA 30710
(706) 694-4298

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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I. QUESTIONS PRESENTED FOR REVIEW

1. When no evidence of record shows proscribed sodomy beyond a reasonable doubt, may a trial court consistent with due process deny a motion for directed verdict on the charge involving sodomy?

2. When prosecutors introduce evidence of legal sexual contact of a sixteen year old is it error for a trial court to refuse a charge clarifying what contact was legal?

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IV. BASIS FOR JURISDICTION OF THIS COURT

A. Date of Orders to be Reviewed

On February 20, 2002, the Georgia Court of Appeals affirmed Petitioner's conviction on the two issues presented in this petition. On June 21, 2002, the Georgia Supreme Court denied Petitioner a writ of certiorari on the two issues.

B. Jurisdictional Basis for Review

Under the provisions of 28 U.S.C. §1257, this Court has jurisdiction to review the final order of a lower state court when certiorari is denied by the state's court of last resort.

C. Constitutional Provisions, Statutes and Rules

This Petition involves the *Fourteenth Amendment to the United States Constitution*, the Georgia sodomy statute, O.C.G.A. §16-6-2(a), the Georgia aggravated child molestation provision, O.C.G.A. §16-6-4(c) and the Georgia statutory age of consent for sex, O.C.G.A. §16-6-3.

The *Fourteenth Amendment to the United States Constitution* states in pertinent part, " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law."

O.C.G.A. §16-6-2(a) states, "A person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another."

O.C.G.A. §16-6-4(c) states, "A person commits the offense of aggravated child molestation which act physically injures the child or involves an act of sodomy."

O.C.G.A. §16-6-3 now states, "A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse."

V. STATEMENT OF THE CASE

Petitioner was indicted on May 17, 2000 by a Murray County, Georgia Grand Jury in four counts of child molestation and four counts of aggravated child molestation involving Petitioner's then 16 and 14-year-old stepchildren. (R-5-8). The state tried Petitioner on five counts of the indictment on October 9 through October 13, 2000.

At the close of the prosecution case, petitioner moved for a directed verdict and dismissal. (T-294,295). The motion was denied as to all counts. (T-295). Petitioner filed his request to charge number four, which had to do with the legality of sodomy between persons over the age of consent. (R-61). The trial court did not give Petitioner's charge. (T-341-352). Petitioner reserved exceptions to the charge of the trial court. (T-352).

On 13 October 2000, Petitioner was convicted of Count One, aggravated child molestation of his older stepchild; Count Five, child molestation of his older stepchild; and Count Seven, child molestation of his younger stepchild. (T-358;R-5-8).

Petitioner was sentenced on December 6, 2000 to ten years confinement on Count One and five years confinement on Counts Five and Seven with fifteen years probation consecutive to Count One. (T-368,369; R-70,71).

Petitioner timely moved for a new trial, raising each issue in this petition (R-73,78-92). On March 7, 2001, Petitioner's motion for new trial and renewed motion for judgment of acquittal was denied. (R-97). Petitioner timely appealed the trial court order, and on February 20, 2002, the Georgia Court of Appeals affirmed Petitioner's conviction. (App. 1). On June 21, 2002, the Georgia Supreme Court denied Petitioner's petition for certiorari. (App. 11).

VI. STATEMENT OF MATERIAL FACTS

Petitioner was convicted of aggravated child molestation with testimony given by 17-year-old A.A. about conduct which occurred when A.A. was 16. A.A. testified that prior to her sixteenth birthday the Petitioner had touched her "butt" with his penis under her underwear. (App. 17, 18). However, when he hugged her up, he didn't perform a sexual act. (App. 18). Later A.A. clarified that Petitioner only rubbed his penis on her anus once. (App. 19). At that time, A.A. testified that Petitioner performed a sexual act using his hand. (App. 20).

Upon final questioning of the District Attorney, the 17 year old confirmed that Petitioner had only touched her anus that one time and that it had been a short time before she made the complaint. (App. 27). A.A. was born on July 26, 1983. (T-83). She made her complaint on March 10, 2000, around three and one half months short of her 17th birthday. (T-93, 242, 244).

In addition to the sodomy occurring after A.A. had turned sixteen, the state introduced evidence of a directed masturbation episode occurring when A.A. was 16 years of age and a camping episode involving sexual contact with petitioner when A.A. was 16. (T-112,113,131,133).

A. A. testified that she got along "fine" with Petitioner (T-103-104). She testified that the most petitioner ever did was to get cool to her if she didn't do what he wanted. (T-137). She gave the jury no reason she might be afraid of Petitioner, and she told the jury that she did not tell Petitioner to stop doing those things. (T-110). She told the jury that he never threatened her with violence in the least. (T-137). She testified that she didn't tell her mother only because it was embarrassing and she didn't want to hurt her mother. (T-110). She thought being sexual with Petitioner was "just the way it was supposed to be." (T-111). She testified to only one incident over many years in which she felt any fear. (T-114).

In light of the admitted similar transaction evidence involving A.A. as a 16-year-old, the absence of evidence about sodomy prior to the age of 16 and the voluntary nature of A.A.'s conduct, Petitioner submitted his request to charge number four which requested the trial court charge the jury "In Georgia, a person of 16 years of age may consent to have a sexual contact with a stepparent which does not involve sexual intercourse." (App. 5).

VII. ARGUMENT AS TO THE NECESSITY OF REVIEW

A. The Court Needs to Show Lower Courts that Convictions Like Petitioner's Relying on Perjured or Ambiguous Testimony Trample Due Process Rights.

Counsel suspects that the topic and distinctions discussed in this petition are not ones which appellate courts favor for content or which trial courts enjoy describing to juries. They involve sexual crimes and the distinction between sexual acts. To blur distinctions or to reduce the importance of distinctions in sexual acts can be a product of an aversion to the discussion. However, to not apply proof beyond a reasonable doubt to every element of a sexual offense is to deprive those like Petitioner of basic due process.

The Georgia Court of Appeals ruled that even though the victim A.A. testified twice in the prosecution case that she was only touched in her anus one time shortly before her outcry and close to her 17th birthday, her previous testimony dealing with petitioner touching or rubbing her "butt" when she was under the age of 16 was sufficient to allow a conviction relying upon sodomy. (App. 2-4).

In order to allow a conviction for aggravated child molestation and a minimum mandatory ten year sentence, the appeals decision had to allow for the chief prosecution witness, A.A., to contradict herself – or perjure herself. In finding proof of underage sodomy beyond a reasonable doubt, the appeals court ruled that the jury could rely upon use of the ambiguous reference "butt" over the clarifying and specific reference "anus" even if it contradicted the prosecution witness unimpeached testimony.

When A.A. testified, she testified her anus was involved only one time, shortly before her 17th birthday.

This Court has found due process violations in several cases where prosecutors knowingly have introduced and argued from false testimony. A verdict obtained through the use of perjured testimony should be reversed. See *United States v. Bagley*, 473 U.S. 667, 678-80, 87 L.Ed.2d 481, 105 S.Ct. 3375 (1985); *Mooney v. Holohan*, 294 U.S. 103, 79 L.Ed. 791, 55 S.Ct. 340 (1935). Also see *Miller v. Pate*, 386 U.S. 1 (1967) (prosecutor proffered men's undershorts allegedly stained with murder victim's blood, when stains were actually paint); *Napue v. Illinois*, 360 U.S. 264 (1959) (prosecution witness falsely testified that he had not received consideration for his testimony); *Giglio v. United States*, 405 U.S. 150 (1972) (same).

The use of the term "butt" or the term "bottom" denotes a certain area of the body without necessarily denoting the "anus". Just as a statement alleging a touch to "the body" would be too general to make proof beyond a reasonable doubt that the "anus" was involved, so too should statements alleging a contact with "the butt", especially when the uncontradicted evidence of record is that no contact with "the anus" occurred prior to the sixteenth birthday of A.A.

Here, the effect of the state arguing from the contradicted testimony is that of an argument from perjured testimony. The state should not be allowed to bring its case to the jury, when the only way that the jury could find beyond a reasonable doubt that sodomy occurred prior to A.A.'s sixteenth birthday was by using false implication from ambiguous testimony. Ambiguous testimony was as wrong as perjured testimony and did not prove any contact

with "the anus", when the only clear and specific testimony detailed contact with the anus only after the age of 16.

As such, Petitioner's conviction for an offense requiring proof of sodomy is not supported by sufficiency of evidence under *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979) and does not meet the "beyond a reasonable doubt" standard announced in *In Re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

This Court could lend great assistance to state courts by ruling that distinctions in sexual prosecutions actually do make a difference and that the due process clause does not stop for trial of sexual cases.

B. This Court Should Encourage Proper Charging in Sexual Prosecutions.

In Petitioner's trial, the prosecution used a number of incidents which occurred *after* the sixteenth birthday of A.A. A.A.'s testimony about the sodomy incident indicated that it took place well after her 16th birthday. The underlying act of sodomy was once appealed to this Court from Georgia and affirmed in *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986). Since then the Georgia Supreme Court ruled in *Powell v. State of Georgia*, 270 Ga. 327, 510 S.E.2d 18 (1998) that sodomy between a 17-year-old and her uncle was private consensual conduct occuring in a bedroom and could no longer form the basis for a prosecution.

Just as the trial court, the Georgia jury was probably not completely aware of the change in Georgia law. After a

number of incidents involving sixteen year old A.A. were allowed in testimony, Petitioner offered his request to charge number four to reduce the likelihood he would be convicted of Count One even though it occurred after A.A. was 16.

The evidence was replete with A.A. submitting to sexual contacts without fear of force and without threat by Petitioner. Yet the Georgia Court of Appeals found no evidence of consent and ruled the charge would be misleading.

Petitioner asks for certiorari to have a new trial in which his jury might be more properly charged about the legality of his conduct.

VIII. CONCLUSION

Petitioner asks this Court's indulgence to put meaning into the standard set in *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979) when courts deal with the elements of sex crimes.

Petitioner asks for this Court to grant certiorari to reverse his conviction and more completely charge his new jury about applicable Georgia law making sodomy legal for those over the age of consent.

Respectfully submitted,

JOHNSON LAW, P.C.
TODD M. JOHNSON
Georgia Bar Number 395651
P.O. Box 48
Cohutta, GA 30710
(706) 694-4298

THIRD DIVISION
JOHNSON, P. J.,
RUFFIN and ELLINGTON, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, December 14, 2000)
http://www.appeals.courts.state.ga.us/rules.html

February 20, 2002

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A01A1724. RIDLEY v. THE STATE. JO-068C

JOHNSON, Presiding Judge.

After a jury trial Tim Ridley was convicted of one count of aggravated child molestation and two counts of child molestation for offenses committed against his two stepdaughters, A. A. and L. A. He appeals from the denial of his motion for a new trial. Ridley asserts that the trial court erred by: (1) denying his motion for a directed verdict of acquittal and motion for new trial on count one; (2) failing to give his requested charge on the legality of consensual sexual contact between a stepfather and his sixteen-year-old stepchild; (3) excluding evidence of a prior false or exaggerated allegation of child molestation by one of the victims; (4) admitting evidence of similar transactions without a prior hearing; and (5) admitting evidence of non-contact marital sex as a similar transaction. Because we find the enumerations without merit, we affirm the convictions.

1. (a) Ridley enumerates as error the trial court's denial of his motion for a directed verdict of acquittal on count one, the aggravated child molestation of A. A.

Ridley argues that the state failed to prove two essential elements of the crime as charged – A. A.'s age when the alleged sodomy occurred and contact between his penis and A. A.'s anus.[1]

The standard for reviewing the denial of a motion for a directed verdict of acquittal is whether under the rule of *Jackson v. Virginia*,[2] the evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that the defendant was guilty of the charged offense.[3] "[A]ggravated child molestation requires only proof of child molestation that either physically injures a child or involves an act of sodomy. OCGA § 16-6-4(c)"[4]

During the direct examination of A. A., the state questioned her about the contact:

> Q: Did he touch any part of your body with any other part of his body?
>
> A: Yeah.

---

[1] A person commits the offense of aggravated child molestation when he commits an offense of child molestation which act physically injures the child or involves an act of sodomy. OCGA § 16-6-4(c). A person commits the act of sodomy when he performs or submits to a sexual act involving the sex organs of one person and the mouth or anus of another. OCGA § 16-6-2(a).

[2] 443 U.S. 307 (99 SC 2781, 61 LE2d 560) (1979).

[3] *Mills v. State*, 244 Ga. App. 28, 29-30 (2) (535 SE2d 1) (2000).

[4] *House v. State*, 236 Ga. App. 405, 409 (2) (512 SE2d 287) (1999).

Q: What did he touch you with?

A: His penis.

Q: What part of your body did his penis touch, A___?

A: My butt.

Q: Was it outside or inside your clothing?

A: Inside.

A. A. also testified that "[o]ne time he pulled my underwear down and he has his down" and "[h]e tried to stick it in my butt."

When asked her age when Ridley first touched her, A. A. testified that "I was under sixteen." Although Ridley points to contradictions in A. A.'s testimony about her age when the alleged contact occurred, this Court has held:

> [T]hat some evidence offered by a witness seems contradictory to his own or to some other's, or incomplete or uncertain, does not automatically discredit the evidence given by that witness for it is the function of the triers of fact to determine to what evidence it gives credence. It is not for us to determine or question how the jury resolved any apparent conflicts or uncertainties in the evidence.[5]

Accordingly, a rational trier of fact could find from the evidence adduced at trial proof of Ridley's guilt beyond a

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[5] (Citations and punctuation omitted) *Royal v. State*, 217 Ga. App. 459, 460 (1) (458 SE2d 366) (1995).

reasonable doubt of aggravated child molestation,[6] and the court's denial of the motion for a directed verdict of acquittal was proper.[7]

(b) Ridley also maintains that the trial court erred in denying his motion for a new trial on this same count. On appeal, we do not weigh evidence or resolve conflicts in trial testimony when the sufficiency of the evidence is challenged.[8] Where there is competent evidence supporting each fact necessary to make out the state's case, the jury's verdict must be upheld[9] and minor inconsistencies in the trial testimony go to the weight given the evidence, not to its sufficiency to support the jury's verdict.[10] Viewed in the light most favorable to the prosecution, we conclude that the evidence was sufficient to support the conviction on count one beyond a reasonable doubt.[11] Accordingly, the trial court did not err in denying Ridley's motion for a new trial on that count.

2. Ridley next enumerates as error the trial court's failure to give his requested charge number four on the age of consent. The requested charge advised that:

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[6] *Jackson v. Virginia*, 443 U. S. 307 (99 SC 2781, 61 LE2d 560) (1979).

[7] See *Brownlow v. State*, 248 Ga. App. 366, 370 (2001); *Morgan v. State*, 226 Ga. App. 327, 329 (2) (486 SE2d 632) (1997).

[8] *Dismuke v. State*, 261 Ga. 254 (1) (403 SE2d 812) (1991).

[9] *Peek v. State*, 247 Ga. App. 364, 365 (1) (542 SE2d 517) (2000).

[10] See *Heard v. State*, 221 Ga. App. 166, 167 (1) (471 SE2d 22) (1996).

[11] See *Lindo v. State*, 218 Ga. App. 756, 757 (1) (463 SE2d 148) (1995).

> In Georgia, a person of 16 years of age may consent to have sexual contact with a stepparent which does not involve sexual intercourse.
>
> OCGA § 16-6-3 Statutory Rape involves a person under 16 years[.]
>
> OCGA § 16-6-22 Incest statute forbids only "sexual intercourse" between stepfather and stepdaughter[.]
>
> *Powell v. State*, 270 Ga. 327 (510 SE2d 18) (1998) legalizing sodomy above age of consent as applied to 17 year old and uncle.

We agree with the trial court's refusal to give the requested charge on the age of consent. "It is well settled that a request to charge the jury must be legal, apt, precisely adjusted to some principle involved in the case and be authorized by the evidence."[12] Further, it must embody a correct, applicable and complete statement of law and must not confuse and mislead the jury or cloud the issues in the case.[13]

The indictment in this case charges Ridley with aggravated child molestation in that he "did perform an immoral and indecent act which did involve an act of sodomy upon the person of and to . . . a child under the age of sixteen years. . . . " In this case, there is no evidence that A. A. consented to sex with Ridley. A. A. in fact testified that she was afraid of Ridley and that she "didn't want him to treat her like that." Further, the indictment

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[12] (Citation and punctuation omitted) *Kelley v. State*, 235 Ga. App. 177, 179 (509 SE2d 110) (1998).

[13] See *Dill v. State*, 235 Ga. App. 265, 267 (508 SE2d 739) (1998).

charges him with acts committed against a child under the age of sixteen. That she may legally consent to sex after the age of sixteen is irrelevant to the case and potentially confusing and misleading.[14] Because it is never error to refuse to charge on an issue which is not adjusted to the evidence,[15] this enumeration is without merit.

3. Ridley also challenges the trial court's exclusion of prior allegations of molestation made by L. A. against her half-brother in 1993.[16] He contends that the allegations were false and should have been admitted to attack L. A.'s credibility.

The rape shield statute's[17] exclusion of evidence relating to the past sexual behavior of the complaining witness applies in child molestation cases.[18] But it does not prohibit testimony of previous false allegations by the victim.[19] The defendant has the burden of coming forward with evidence establishing a reasonable probability that the victim made a prior false allegation of molestation,[20] and before such evidence can be admitted, the trial court

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[14] Id.

[15] (Citations and punctuation omitted) *Brown v. State*, 246 Ga. App. 517, 523 (10) (541 SE2d 112) (2000).

[16] The court did allow Ridley's father to testify about L. A.'s allegation that he touched her breasts.

[17] OCGA § 24-2-3 (a).

[18] *McGarity v. State*, 224 Ga. App. 302, 303 (1) (480 SE2d 319) (1997).

[19] *Smith v. State*, 259 Ga. 135, 137-138 (1) (377 SE2d 158) (1989).

[20] See *Kelley v. State*, 233 Ga. App. 244, 251 (5) (503 SE2d 881) (1998).

must make a threshold determination (outside the presence of the jury) that a reasonable probability of falsity exists.[21]

The only evidence proffered by the defense at the hearing on this matter was the testimony of a school social worker who, in fact, testified that, to her knowledge, the allegation was never recanted or changed. Although Ridley mentioned a Department of Family and Children Services report related to the incident, the report was not presented into evidence at the hearing or trial. Nor did the accused testify. The trial court found that Ridley failed to show a reasonable probability that the accusations were made or indeed false.[22] We agree that the facts are not sufficient to show that the allegations were false and accordingly there was no abuse of discretion in the trial court's determination.[23]

Ridley also argues that the prior allegations should have been admitted to rebut the child sexual abuse accommodation syndrome evidence presented by the state. He argues that the expert's testimony that a child who could complain to authorities was more likely to complain later is rebutted by L. A.'s failure to complain about the alleged molestation involving him. He contends that the

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[21] (Citations, punctuation, and footnotes omitted) *Mann v. State*, 244 Ga. App. 756, 759 (2) (536 SE2d 608) (2000).

[22] See *Hines v. State*, 221 Ga. App. 193, 195 (470 SE2d 787) (1996) (when no evidence had been presented at the time of proffer to support a theory that the allegations are false, the trial court did not err in keeping the prior molestation testimony from the jury).

[23] See *Kelley v. State*, 233 Ga. App. 244, 251 (5) (503 SE2d 881) (1998).

prior allegations involving L. A.'s half-brother were needed to show that L. A. had complained before.

Although evidence of prior unrelated molestations may also be admissible to establish other possible causes for behavioral symptoms described as child sexual abuse accommodation syndrome,[24] such was not the case here because Ridley did not present evidence sufficient to show that there were prior allegations involving her brother. And, "[a]dmissibility of evidence is a matter which rests largely within the sound discretion of the trial court."[25] Further, Ridley had the opportunity to rebut the expert's testimony with evidence of the prior allegation against Ridley's father.

Furthermore, even if the trial court should have allowed Ridley to introduce evidence of L. A.'s allegations against her half-brother, it is highly probable that the error did not contribute to the verdict given the abundant evidence against Ridley. Accordingly any error was harmless.[26]

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[24] *Hall v. State*, 196 Ga. App. 523, 525 (2) (396 SE2d 271) (1990) (when the state has presented evidence that indicates that the victims are suffering from child sexual abuse accommodation syndrome, evidence of molestation by third parties may be necessary to prevent the jury from reaching the unwarranted conclusion that the *only possible explanation* for the medical findings and the existence of behavior consistent with the syndrome was that the victim had been molested by appellant).

[25] *Phillips v. State*, 251 Ga. App. 179, 180 (3) (553 SE2d 847) (2001).

[26] *Berry v. State*, 235 Ga. App. 35, 38 (2) (508 SE2D 435) (1998).

4. Ridley also contends that the trial court erred in admitting evidence of masturbation involving A. A. and L. A. as similar transactions. A. A. and L. A. both testified that at various times Ridley would make them masturbate while he watched. However, Ridley failed to raise a single objection to this testimony at trial. Thus, by his failure to object below, Ridley waived the right to raise the issue on appeal.[27]

5. In his final enumeration of error, Ridley asserts that the trial court erred in permitting the state to introduce similar transaction evidence showing that Ridley on occasion directed his wife to masturbate. He contends that because the indictment relied upon "fondling" or "contact" with his penis, testimony of "non-contact" sex with his wife was not sufficiently connected to the acts charged in this case. We do not agree.

The similar transaction evidence shows that at times Ridley would ask his wife to masturbate in the car while giving her instructions on what to do. A. A. and L. A. both testified that Ridley would instruct them to masturbate in the car.

The rules regarding the admissibility of prior acts may be liberally extended in the area of sexual offenses involving children.[28] Further, the prior acts need not be

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[27] *Turner v. State*, 245 Ga. App. 294, 299 (5) (536 S.E.2d 814) (2000).

[28] See *Swift v. State*, 229 Ga. App. 772, 773 (2), 774 (d) (495 SE2d 109) (1997).

identical to be admitted.[29] The trial court in the instant case admitted the similar transaction evidence finding that it demonstrated bent of mind, modus operandi, intent and course of conduct. This is a permissible purpose for similar transaction evidence in Georgia.[30] "A trial court's determination that similar transaction evidence is admissible will not be disturbed absent an abuse of discretion."[31] We find no abuse of discretion here.

Judgment affirmed. Ruffin and Ellington, JJ., concur.

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[29] See *Mills v. State*, 251 Ga. App. 39, 40 (1) (553 SE2d 353) (2001) (evidence of "threesome" involving Mills, his wife and young goddaughter admissible to show bent of mind and to corroborate the victims' testimony that "threesome" occurred in the instant case).

[30] *Davis v. State*, 238 Ga. App. 84, 87 (4) (517 SE2d 808) (1999).

[31] (Citations and punctuation omitted) *Sweet v. State*, 237 Ga. App. 613, 615 (2) (516 SE2d 317) (1999).

SUPREME COURT OF THE STATE OF GEORGIA

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ATLANTA

DATE: June 21, 2002

Todd Mitchell Johnson
JOHNSON LAW, P.C.
P. O. Box 48
Cohutta GA 30710
Case No. S02C0935

TIM RIDLEY V. THE STATE

COURT OF APPEALS CASE NO. A01A1724

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sherie M. Welch, Clerk

IN THE SUPERIOR COURT FOR THE COUNTY OF MURRAY, STATE OF GEORGIA

STATE OF GEORGIA,	**CRIMINAL ACTION,**
-vs-	**FILE NO. 00-CR-135**
TIM RIDLEY,	**CHARGE: Aggravated Child Molestation (2 cts); Child Molestation (3 cts.)**
Defendant.	

TRIAL PROCEEDINGS, BEFORE A JURY

VOLUME I

OCTOBER 9-13, 2000

MURRAY COUNTY COURTHOUSE, DALTON, GEORGIA

HONORABLE WILLIAM T. BOYETT, Presiding

* * *

[91] else would sleep in the bed with you and Tim?

A Mamma.

Q Now, up until what point in time did you sleep in the bed with Tim and your Mom? Until – how old were you?

A Sixteen.

Q So shortly after the time you moved in until the time you're sixteen you're sleeping in the bed with Tim; is that correct?

A Well, it was a while before, right after we moved in – after we moved in it was a while before I started sleeping –

Q Okay. But from the time you started sleeping with him in that bed until you were sixteen, where would you be most of the time, in his bedroom, your bedroom? Where would you sleep?

A In his bedroom.

Q Were there times at all when you slept in your bed?

A Yeah.

Q Was that frequently or rarely?

A Not many times.

Q And each time that you did did his behavior towards you change?

A What?

Q And every time you would sleep in your room did

* * *

[116] A Yeah.

Q And when you get in there is there anybody else in the bedroom?

A No.

Q Do you scratch his back?

A Yeah.

Q Now is this just before bed, or is it different times during the day?

A Just before bed.

Q Now is he dressed for bed at that point?

A When he gets in the bed, yes.

Q I'm sorry. Were you finished?

A Yeah.

Q And what did he wear when he slept in the bed with you? What was his clothing, if any?

A Just his underwear.

Q Did he wear pajamas?

A No.

Q You say his underwear, do you know what kind of underwear he wore?

A Just briefs.

Q Briefs.

A Briefs.

Q Did he have anything else on?

A No.

[117] Q Did he wear a tee-shirt sometimes or not?

A When he'd get up to go use the bathroom he'd put a tee-shirt on.

Q But in the bed he had on briefs?

A Uh-huh.

Q So you and he are in the bed, right?

A Yeah.

Q Does anything happen then, Amy?

A What do you mean?

Q You scratch his back, right?

A Yeah.

Q What happens, if anything, after that?

A I'd fall asleep and then sometimes I'd wake up and he'd be touching me.

Q When you fell asleep, at that point in time when you fell asleep, was your mom in the bed then or not?

A Yeah.

Q She was already in the bed when you fell asleep?

A No, she wasn't in the bed before I fell – I'd be scratching and she'd come on and get in the bed and then I'd fall asleep.

Q Now when you fell asleep were you next to him or were you on the other side of your mother?

A I was next to him.

Q Now, did those sleeping arrangements, in other [118] words, whether you were next to Tim, on the other side of your mother, on the other side of Tim, did that change or was it always the same way?

A It changed sometimes.

Q Now, you indicated you fell asleep and then something woke you up; is that right?

A Yeah.

Q What was it that woke you up? What do you remember?

A Tim would be touching me.

Q How was he touching you?

A He'd be rubbing my breasts.

Q With what?

A His hands.

Q Did he touch any part of your body with any other part of his body?

A Yeah.

Q What did he touch you with?

A His penis.

Q What part of your body did his penis touch, Amy?

A My butt.

Q Was it outside or inside your clothing?

A Inside.

Q Ma'am?

A Inside.

[119] Q Was that the first time that he touched you was inside your clothing?

A No.

Q Let's talk about the first time that you remember, okay. Can we do that?

A (Nods head up and down)

Q Was there more than one time?

A Yeah.

Q Let's talk about the first time you remember that happening. About how old were you then?

A I don't remember.

Q Do you remember what grade you were in?

A (Shakes head from side to side)

Q Do you remember if you were under sixteen or over sixteen?

A I was under sixteen.

Q When he touched you with his penis, you said he touched your butt; is that right?

A Yeah.

Q How did it feel; do you remember, his penis?

A It was hard.

Q Hard?

A Yeah.

Q That time that he touched you that first time was, it inside your underwear or outside your underwear?

[120] A Outside. He just had me hugged up to him.

Q He had you hunched up to him?

A Hugged up.

Q Hugged up; I'm sorry. Did he have his underwear on or off?

A He had them on.

Q When he touched your butt did he do anything?

A No, just had me hugged up real tight.

Q Where was your mom?

A I don't remember.

Q Do you remember if she was in the bed that time or not?

A No.

Q Do you remember if she was in the house or not?

A No.

Q Do you have difficulty in remembering these things?

A (No response)

Q Let me ask you this, Amy. Do you know how many times something similar to this happened to you? How many times did he do that, more or less, or do you know?

A He hugged up to me a lot.

Q Hugged up to you a lot. Did he hug up to you in the bed a lot?

A Yeah.

[121] Q Did he put his penis into contact with your butt a lot? Did he do that, we're talking about here. Did he do that a lot or not?

A Yeah.

Q When we say a lot are we talking five times, ten times or more? Do you have any idea?

A More. More.

Q Now did that ever change, the way he did that, in the bed? Do you understand my question?

A No.

Q You said that his penis was inside your underwear and your underwear was on. Did it ever happen any differently than that?

A Yeah.

Q Can you tell us about that, please?

A One time he pulled my underwear down and he has his down.

Q What, if anything, happened then?

A He tried to stick it in my butt.

Q His underwear was down and yours was down. Were you in the bed?

A Yeah.

Q Was anybody else in the bed?

A No.

Q You said he tried to stick it in your butt. Did [122] his penis touch your anus?

A Yes.

Q Did he do anything with it then?

A He just rubbed it around.

Q Rubbed it around?

A Uh-huh.

Q Do you know how he did that? Did he use his hands –

A Yeah.

Q – with his body, which way?

A He used his hand.

Q Now, did anything come out of his penis?

A Yeah.

Q Do you know what that was or where it went?

A It was on my butt.

Q It was on your butt. How did it feel?

A Sticky.

Q Any other feeling that you associate with it or just that it was sticky?

A (Shakes head from side to side)

Q How did that get off of your butt, Amy? How did that sticky stuff get off of your butt?

A What do you mean?

Q Did it stay on your butt or did you get it off or did he get it off somehow?

[123] A When I got up I took a shower.

Q Took a shower?

A (Nods head up and down)

Q Did his penis go inside of your butt? Your anus, did it go up inside your anus?

A No.

Q What would happen when he tried to do that?

A I'd move away.

Q You'd move away?

A Uh-huh.

Q Would he ever say things to you while this was going on, these things were going on, did he ever say anything to you?

A (No response)

Q Did you understand my question? Did he ever call you a name or anything like that?

A He'd say that I was his baby.

Q You were his baby?

A Uh-huh.

(Brief pause in the proceedings)

Q When you were telling your mother about some of these things that he had done to you at the go-cart races, did you tell her about when he made you play with yourself? Did you tell her about that?

A Yeah.

[124] Q Now, when Tim put his penis into contact with your anus did that hurt or not?

A No.

Q Did you bleed or anything like that?

A No.

Q What about when he put his finger in your vagina, did that hurt?

A Yeah.

Q Did you bleed then?

A No.

Q Now, when he was doing these things to you, different things in the bedroom and stuff – is there a VCR in that bedroom?

A Yeah.

Q Did he ever tell you anything with respect to the VCR while these things were going on?

A (No response)

Q You didn't understand my question?

A No.

Q When he was doing these things to you in the bedroom did he ever tell you anything about a videotape?

A No.

Q Were there ever any videotapes in the bedroom?

A Yeah.

Q Did he ever tell you anything about that, about [125] using one in any way?

A What do you mean?

Q Did he ever tell you, for example, that there was one in the machine?

A Yeah.

Q What did he tell you about that?

A That there's one in the VCR that he wanted me to watch.

Q Did you do that; did you watch it?

A Yeah, because he'd get mad if I didn't.

Q Do you remember what was on that videotape that he told you to watch?

A (No response)

Q Some of the things that were on the videotape, what was it?

A It was a porno.

Q A porno?

A (Nods head up and down)

MR. SPENCER: May we approach, Your Honor?

THE COURT: You may.

(Bench conference)

MR. SPENCER: A few more questions and we're going to go into the similar, but I'll stop right before I'm ready to go into the similar in case the Court wants to give an instruction, but I've got a [126] few more questions first.

THE COURT: Which similar are you going into?

MR. SPENCER: The hunting trip.

THE COURT: Oh.

MR. SPENCER: But I think I've got two or three questions first, Your Honor.

THE COURT: Do you request an instruction?

MR. JOHNSON: I request some more instruction, Your Honor.

THE COURT: Okay.

MR. JOHNSON: Having reviewed that I'd like the instruction modified.

THE COURT: Let's see which one it is.

MR. SPENCER: I requested the pattern instruction on one.

THE COURT: How do you want to change it?

MR. JOHNSON: I changed it to –

THE COURT: Just mark how you want to change it.

MR. JOHNSON: I did right here.

THE COURT: Oh, you've already.

(Bench conference concluded.)

Q **(By Mr. Spencer)** Amy, I just have a couple more questions. When he was showing you the videotape did he have his clothes on then?

A Yeah, he wasn't in the room.

[127] Q He was or wasn't?

A Wasn't.

Q Did he come into the room sometime while you were watching the videotape?

A He opened the door.

Q Then what happened?

A He'd see if I was watching it and if I was playing with myself.

Q Did he have his clothes on at that time or not?

A Yeah.

Q Did he ever take his clothes off?

A No.

Q Did you have your clothes on?

A (No response)

Q Were your clothes on or off, Amy?

A I'd have my pants down.

Q You had your pants –

A Yeah.

Q Did they stay on or did they come off?

A They were off.

Q How did they come to get off?

A He'd tell me to watch that movie and play with myself, and he'd shut the door, and he'd open it to see if I was doing it. And if I wasn't he'd get mad.

Q Did he tell you to take your clothes off?

[128] A (Nods head up and down)

Q Amy, do you remember the last time he put his finger in your vagina, do you remember about when that was the last time you can remember? Not necessarily the date but in terms of when you went and talked to the police, how long before that?

A It was that week.

Q That same week. What about him touching – let me make sure you understand this. When he put his penis and touched your anus with it and moved it around, did that happen once or more than once like that?

A That just happened that one time.

Q And in terms of when you told the police and when that happened, how long before?

A I don't remember.

Q A little while or a long while, do you think?

A A little while.

Q And all these things that happened to you, were they in Murray County? Hang on a second.

THE COURT: Ladies and gentlemen, sometimes evidence is admitted for a particular purpose. Such evidence may be considered by the jury for the sole issue or purpose for which the evidence is introduced and not for any other purpose. The law provides that evidence of other transactions of this defendant which

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